

FILED
WILLAMSON COUNTY
CLERK

2008 JUL 13 AM 10:17

IN THE CHANCERY COURT FOR WILLAMSON COUNTY, TENNESSEE
TWENTY-FIRST JUDICIAL DISTRICT AT FRANKLIN

ENTERED 6-19-08

STATE OF TENNESSEE, *ex rel.*)
ROBERT E. COOPER, JR., ATTORNEY)
GENERAL and REPORTER,)
)
Plaintiff,)
v.)
)
J K HARRIS & COMPANY, L.L.C., a South)
Carolina limited liability corporation; J K)
HARRIS FINANCIAL RECOVERY)
SYSTEM, L.L.C., a South Carolina limited)
liability corporation, and PROFESSIONAL)
FEE FINANCING ASSOCIATES L.L.C.,)
a South Carolina limited liability corporation,)
)
Defendants.)

Case No. 34785

AGREED FINAL JUDGMENT AND
PERMANENT INJUNCTION

This cause coming on to be heard and being heard before the undersigned Chancery Court Judge in Willamson County for entry of an Agreed Final Judgment between the Plaintiff State of Tennessee *ex rel.* Robert E. Cooper, Jr., Attorney General and Reporter, on behalf of the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance, and Defendants JK Harris & Company, L.L.C., J K Harris Financial Recovery System, L.L.C., and Professional Fee Financing Associates, L.L.C. as well as John K. Harris individually.

The Defendant expressly waives ten day notice of the Attorney General's intention to file an action pursuant to Tenn. Code Ann. § 47-18-108(a)(2). The Defendant agrees that the State is

not required to serve a summons or other process of the Complaint upon Defendants or John Harris. The Defendants and John K. Harris expressly waive and relinquish any defense, requirement, or argument that the permanent injunction below does not contain an adequate finding of facts or conclusion of law.

This Agreed Final Judgment is entered into by Defendants and John Harris as their own free and voluntary act and with full knowledge and understanding of the nature of the proceedings and the obligations and duties imposed upon it by this Agreed Final Judgment, and they consent to its entry without further notice, and avers that no offer, agreements or inducements of any nature whatsoever have been made to them by the Plaintiff or their attorneys or any employee of the Attorney General's Office to procure this Agreed Final Judgment.

The Court, with the consent of the parties and John K. Harris, individually determines that the complaint states a cause of action against the defendants and John Harris pursuant to the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101 et seq., in the operation of JKHC and PFFA, and the Court finds good and sufficient cause to adopt the agreement of the parties based upon the Plaintiff's allegation of fact and law as set forth herein.

ALLEGATIONS OF FACTS

A. Plaintiff is the State of Tennessee, acting on relation of Robert E. Cooper, Jr., Attorney General and Reporter, on behalf of Mary Clement, the Director of the Tennessee Division of Consumer Affairs, pursuant to authority granted by the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. § 47-18-101, *et seq.* ("TCPA"), and his general statutory and common law authority. *See*, Tenn. Code Ann. § 8-6-109.

B. Defendant J K Harris and Company, L.L.C. ("JKHC") is a limited liability

company registered under the laws of South Carolina with the South Carolina Secretary of State's Office. Its principal address is 4995 Lacross Road, North Charleston, South Carolina 29406. JKHC is in the business of advertising its services to file offers in compromise ("OIC") with the Internal Revenue Service ("IRS") on behalf of consumers, who are behind on paying their taxes, and collecting a fee from consumers prior to the services being completed.

C. Defendant J K Harris Financial Recovery System, L.L.C. ("FRS") is a limited liability company registered under the laws of South Carolina with the South Carolina Secretary of State's Office. FRS was in the business of offering debt resolution services to consumers in Tennessee and collecting fees for services prior to rendering them.

D. Defendant Professional Fee Financing Associates, L.L.C. ("PFFA") is a limited liability company registered under the laws of South Carolina with the South Carolina Secretary of State's Office. PFFA extends credit to consumers in Tennessee by financing the contracts Tennessee consumers entered into with JKHC.

E. John K. Harris is a resident of South Carolina and is the member manager for JKHC, FRS, and PFFA. John K. Harris is not a defendant in this action but voluntarily agrees to be personally bound by all of the injunctive provisions set out in this Agreed Final Judgment and agrees that any successor companies, corporations, partnerships, or sole proprietorships for which he is an owner, member manager, officer, director, or investor shall also be bound by the terms of this Agreed Final Judgment.

Upon information and belief, the State of Tennessee alleges the following:

F. The State alleges that since 1999, the Tennessee Division of Consumer Affairs and the Consumer Advocate and Protection Division of the Tennessee Attorney General's Office

have received 30 complaints from Tennessee consumers concerning the practices of JKHC. According to the complaints, defendants and John Harris advertised widely that JKHC could assist consumers who owe money to the IRS and state revenue offices by filing for an OIC so that consumers may repay the IRS and state revenue offices for “pennies on the dollar.” However, that was not the case.

G. The State alleges that Defendants and John Harris advertised JKHC had more than 450 offices nationwide. This advertisement led consumers to believe that the JKHC representative at the office near the consumer’s home would be the one who would be handling the consumer’s matter for JKHC when that was not the case. Instead, the offices were only sales offices which were not open during regular business hours unless a sales agent was present to meet with prospective clients, and the person handling the consumer’s OIC was actually located at the JKHC home office in North Charleston, South Carolina. Once the consumer met with the sales agent, the consumer was not able to meet in person with the person handling his or her case unless the consumer traveled to Charleston, South Carolina.

H. The State alleges that Defendants’ and John Harris’ advertising also led consumers to believe that the work on their files would be handled by “tax experts,” “tax professionals,” and “ex-IRS agents,” but the work of preparing the OIC offers was not performed by these trained “experts.” Instead the work was handled by employees without the advertised expertise.

I. The State alleges that consumers complained that JKHC did not provide the services it advertised. Consumer complaints indicated that the consumers would have a case manager assigned to their “cases,” but the case managers changed frequently, and the consumers

were generally asked to provide the same documentation on several different occasions because the new case manager could not locate the requested information in the file. Consumers also complained that in cases where the case manager actually filed an OIC for a consumer, the information was out of date, and the IRS would request updated information, further delaying the consumer's attempt to receive approval on the proposed OIC. Consumers further complained that when they tried to reach their case manager to discuss their cases, they were unable to speak with the case manager or to get an accurate report of the status of their cases.

J. The State alleges that according to IRS statistics, the percentage of consumers who are actually approved for OIC is very small and defendants and John Harris repeatedly took money from consumers without fully investigating whether the consumer would qualify for an OIC or while knowing that the consumer would not qualify for an OIC.

K. The State alleges that Defendants and John Harris did not always perform the work promised by their contracts and, in many cases, failed to ever apply for the OIC for the consumers yet refused to return the money the consumers had paid for the services.

L. The State alleges that Defendant FRS sent deceptive, misleading and unfair mailings to residents of Tennessee informing the consumers that someone had filed a judgment against the him or her in a Tennessee court when that was not the case. FRS deceptively and unfairly offered to help the consumer negotiate the debt and repair his or her credit when there was no debt which would affect the consumer's credit.

M. The State alleges that Defendant PFFA financed consumer contracts for consumers who entered into installment contracts with JKHC for the preparation and filing of OIC. When these services were not provided as promised, PFFA would not release the

consumer from the debt.

N. Defendants' and John Harris' alleged unfair, misleading or deceptive business practices were in or affecting trade and commerce in Tennessee.

O. Defendants and John Harris, individually have agreed to the terms of this Agreed Final Judgment to voluntarily resolve this matter. In entering into this Agreed Final Judgment, Defendants and John K. Harris do not admit or acknowledge that they have engaged in unfair or deceptive trade practices, deny Plaintiff's allegations, and represent that they are entering into this Agreed Final Judgment to avoid the cost and distraction of protracted litigation.

ALLEGATIONS OF LAW

P. This Court has jurisdiction over the parties and John Harris and the subject matter. Jurisdiction is retained by this Court for the purpose of enabling the State to apply to this Court for such further orders and directions as may be necessary or appropriate for the construction, modification or execution of this Agreed Final Judgment, including the enforcement of compliance therewith and penalties for violation thereof. Pursuant to Tenn. Code Ann. § 47-18-107, venue as to all matters between the parties and John Harris relating hereto or arising out of this Agreed Final Judgment is solely in Williamson County, Tennessee.

Q. Entry of this Agreed Final Judgment is just and proper.

R. The complaint states a cause of action against the defendants and John Harris pursuant to the Tennessee Consumer Protection Act of 1977, Tenn. Code Ann. 47-18-101 *et seq.* and the Tennessee Credit Services Business Act, Tenn. Code Ann. 47-18-1001 *et seq.*, in the operation of JKHC, FRS and PFFA.

S. This Court finds good and sufficient cause to adopt the agreement of the parties

and these findings of fact and conclusions of law as its determination of their respective rights and obligations and for the entry of this Agreed Final Judgment and Permanent Injunction.

DEFINITIONS

WHEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT the following definitions shall apply to this Agreed Final Judgment:

1. "Advertise," "Advertisement," or "Advertising," shall mean any written, oral, graphic, or electronic statement, illustration, or depiction that is designed to create interest in the purchasing of, impart information about the attributes of, publicize the availability of, or affect the sale or use of, goods or services, whether the statement appears in a brochure, newspaper, magazine, free-standing insert, marketing kit, leaflet, mailer, book insert, letter, catalogue, poster, chart, billboard, public-transit card, point-of-purchase display, package insert, package label, product instructions, electronic mail, website, homepage, film, slide, radio, television, cable television, program-length commercial or "infomercial," or any other medium.

2. "Clear and Conspicuous" or "Clearly and Conspicuously," shall refer to a statement that, regardless of the medium in which it is made, is readily understandable and presented in such size, color, contrast, duration, location, and audibility, as compared to the other information with which it is presented, that it is readily apparent to the person to whom it is disclosed. A Clear and Conspicuous statement may not contradict or be inconsistent with any other information with which it is presented. If a statement modifies, explains, or clarifies other information with which it is presented, it must be presented in close proximity to the information it modifies and in a manner that is readily apparent and understandable.

3. "Consumer," "Client," "Applicant," or "Customer" shall mean any person, a

natural person, individual, governmental agency or entity, partnership, corporation, company, limited liability company or corporation, trust, estate, incorporated or unincorporated association, or any other legal or commercial entity, however organized.

4. “Defendants” shall mean JKHC, FRS and PFFA, their employees, directors, officers, owners, members, managers, parents, agents, assigns, and all other persons or entities acting in concert with them or on their behalf, and their predecessors, subsidiaries, affiliates, and successors.

5. “IRS’s OIC Program” shall mean the IRS’s program to compromise tax debts, as currently described in IRS Form 656 and the published instructions thereto.

6. “JKHC’s OIC Program” shall mean JKHC’s providing or offering to provide services in any way related to the filing of an “offer in compromise” with the Internal Revenue Service on behalf of any Consumer.

7. “OIC” shall mean “offer in compromise” or “offers in compromise,” depending on whether the reference is in the singular or plural.

8. “Represent” means to state or imply, directly or indirectly, through claims, statements, questions, conduct, graphics, symbols, lettering, formats, devices, language, documents, messages, or any other manner or means by which meaning might be conveyed. This definition applies to other forms of the word “represent,” including without limitation “representation,” “misrepresent,” and “misrepresentation.”

9. “States” shall mean the Attorneys General of the states of Arkansas, Arizona, California, Connecticut, Florida, Illinois, Maine, Massachusetts, Michigan, Minnesota, New York, North Carolina, Ohio, Pennsylvania, South Dakota, Tennessee, Vermont, and West

Virginia.

PERMANENT INJUNCTION

IT IS FURTHER ORDERED, ADJUDGED AND DECREED THAT pursuant to Tenn. Code Ann. § 47-18-108(a)(4), Defendants, their members, managers, employees, directors, officers, owners, parents, agents, assigns, and other persons acting in concert with them and John Harris, individually are permanently enjoined from:

10. Representing that Defendants or John Harris can settle consumers' tax debt for "pennies on the dollar," or similar representations, unless such representations are accurate and are neither deceptive nor misleading, and Defendants and John Harris have prior substantiation for making such claims.

11. Representing that Defendants or John Harris have achieved an "average acceptance" settlement amount, or similar representations, unless such representations are accurate and are neither deceptive nor misleading, and Defendants and John Harris have prior substantiation for making such claims.

12. Representing that Defendants or John Harris "would have" achieved specific resolution results for clients, "could have" achieved specific resolution results for clients, or similar representations, when, in fact, Defendant or John Harris did not achieve those specific results.

13. Representing that Defendants' or John Harris' services are or will be provided by "tax professionals," "former IRS agents," "tax experts," or similar representations, unless such representations also include a clear and conspicuous disclosure to the effect that such services will be provided, in whole or in large part, by persons who are not "tax professionals," "former

IRS agents,” or “tax experts.”

14. Representing that Defendants or John Harris have a specific number of offices nationwide, or similar representations, unless Defendants and John Harris clearly and conspicuously disclose that their sales consultants are available to meet with consumers at such locations by appointment only and such customers are provided with phone numbers for JKHC and the consultant.

15. Making any representations that compare or contrast JKHC with its competitors, unless such representations are accurate and are neither deceptive nor misleading, and Defendants and John Harris have prior substantiation for such comparisons and contrasts.

16. Representing that consumers qualify for or are eligible for the IRS’s OIC Program, unless the consumers actually do qualify or actually are eligible for the IRS’s OIC relief, or Defendants and John Harris have prior substantiation for such claims.

17. Charging or accepting payment from a consumer for applying to JKHC’s OIC Program, unless the consumer actually qualifies or is eligible for the IRS’s OIC relief, or Defendants and John Harris have previously collected information from the consumer substantiating qualification or eligibility for the IRS’s OIC Program, and Defendants and John Harris clearly and conspicuously disclose that the information provided by the consumer will determine eligibility for the IRS’s OIC Program and its represented benefits.

18. Representing that Defendants or John Harris will perform services for consumers in a specific manner, unless Defendants or John Harris actually do perform those services as represented, and the Defendants and John Harris have prior substantiation for making such claims.

19. Billing or charging consumers for services that Defendants or John Harris do not perform.

20. Representing that any Defendant or John Harris guarantees results, unless such representations are accurate and are neither confusing, deceptive nor misleading, and Defendants and John Harris have prior substantiation for making the guarantees.

21. Representing that Defendants' or John Harris' administrative and processing fees "may comprise up to 25%" of the fee paid by consumers, unless the Defendants or John Harris regularly provide refunds to consumers without retaining a full 25% of the fee as administrative and processing fees.

22. Representing that the IRS "consistently attempts to force taxpayers to pay more than they are legally obligated to pay," or similar representations that have the tendency to create a false sense of urgency or fear, unless such representations are accurate and are neither deceptive or misleading, and Defendants and John Harris have prior substantiation for making such claims.

23. Using the excerpt from The Wall Street Journal ("...[F]ar and away the Nation's Most Successful Tax Resolution Company..."), or a similar variant thereof, unless JKHC clearly and conspicuously discloses that the quotation refers to JKHC's size rather than to the results attained by JKHC on behalf of its clients, by including a clear and conspicuous disclaimer to that effect, which shall either be located on the same page or screen, or if on a website, be immediately accessible via a link to which consumers are directly referred by a clearly and conspicuously placed asterisk or other hyperlink symbol or phrase, located in close proximity to the representation to which it applies and set in the same size font/character type as that used in

the main body of the page's content, or if disseminated audibly via television or radio broadcast, said disclaimers shall be played at the same decibel level as the main body of the broadcast or otherwise disclaimed in a clear and conspicuous manner.

24. Using endorsements/testimonials purporting to be from specifically identified consumers who have used and are recommending Defendants' or John Harris' services, unless such persons' identities can be verified and the actual content of their endorsements/testimonials can be independently substantiated.

25. Using representative testimonials created from the combined comments of former or current clients, unless Defendants and John Harris disclose the fact that such endorsements are actually composites by including a clear and conspicuous disclaimer to that effect, which shall either be located on the same page or screen, or if on a website, be immediately accessible via a link to which consumers are directly referred by a clearly and conspicuously placed asterisk or other hyperlink symbol or phrase, located in close proximity to the representation to which it applies and set in the same size font/character type as that used in the main body of the page's content, or if disseminated audibly via television or radio broadcast, said disclaimers shall be played at the same decibel level as the main body of the broadcast.

26. Advertising or promoting (including testimonials, solicitations, brochures, or other explanatory materials) Defendants' or John Harris OIC or other tax debt forgiveness-related services in which Defendants or John Harris make representations, expressly or by implication, about Defendants' or John Harris' success rates or about IRS OIC statistics (including applicants' overall eligibility and likelihood of qualifying for the OIC program), or in which the Defendants or John Harris discuss or give examples of offer acceptance rates, average

amounts of offers accepted by the IRS, or the rates of debt forgiveness/reduction that can be potentially achieved, unless:

- (A) when discussing OIC statistics or a particular case, Defendants and John Harris incorporate a clear and conspicuous disclaimer which informs consumers that high rates of debt forgiveness are not typical;
- (B) when discussing OIC average settlement amounts, Defendants and John Harris incorporate a clear and conspicuous disclaimer which informs consumers that acceptance amounts for individual offers in compromise are not based upon the national or overall averages of IRS tax debt forgiveness rates; and
- (C) when discussing OIC statistics or average settlement amounts or the average number of offers accepted, Defendants and John Harris incorporate a clear and conspicuous disclaimer which informs consumers that most consumers should not expect to receive a similar result because an individual consumer's outcome will not necessarily correspond with such averages.

The relevant disclaimer will either be located on the same page as the representation, or if on a website, be immediately accessible via a link to which consumers are directly referred by a clearly and conspicuously placed asterisk or other hyperlink symbol or phrase, located in close proximity to the representation to which it applies and set in the same size font/character type as that used in the main body of the page's content, or if disseminated audibly via television or radio broadcast, said disclaimers shall be played at the same decibel level as the main body of the broadcast.

27. Making oral representations that, directly or indirectly, contradict terms or language contained in Defendants' or John Harris' written contracts with consumers.

28. Making references to IRS OIC statistics in any advertisements unless:
- (A) Defendants and John Harris track their own OIC statistics for at least twelve months preceding the use of any IRS OIC statistics in any advertisements;
 - (B) at the same time they make reference to the IRS OIC statistics, Defendants and John Harris shall reference their own OIC statistics in the same style, size, and format and in close proximity to any IRS OIC statistics; and
 - (C) Defendants and John Harris provide the State of Tennessee, upon request, with an explanation of the process they used in tracking their own OIC statistics and any raw data used to track the statistics.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT pursuant to Tenn. Code Ann. § 47-18-108(a)(4):

29. Defendants and John Harris are permanently enjoined from acting as a “credit repair organization,” as defined in 15 U.S.C. § 1679a, and as a “credit services business,” as defined in the Tennessee Credit Services Businesses Act, Tenn. Code Ann. § 47-18-1001, *et seq.* unless and until they comply with 15 U.S.C. Chapter 41, Subchapter II-A, § 1679 *et seq.* (“Credit Repair Organizations”) and Tenn. Code Ann. § 47-18-1001 *et seq.* (“Credit Services Businesses Act”).

30. Defendants and John Harris are permanently enjoined from representing, directly or indirectly, to any consumer that they can help the consumer “rebuild your credit” or “re-establish your credit” or “begin to build the consumer’s credit status,” or using any term or phrase of similar substance and import to the effect that Defendants and John Harris will provide assistance or advice on improving any consumer’s credit record, credit history, or credit rating, in return for the payment of money or other valuable consideration, unless and until Defendants

and John Harris comply with 15 U.S.C. Chapter 41, Subchapter II-A, § 1679 *et seq.* and Tenn. Code Ann. § 47-18-1001 *et seq.*; provided, however, that Defendants and John Harris may use the statement: “Elimination of bad debts can improve your credit rating.”

31. Defendants and John Harris are permanently enjoined from representing, directly or indirectly, to any consumer that they can or will dispute the accuracy or validity of information contained in consumers’ credit reports, as defined in 15 U.S.C. § 1681a (d), or using any term or phrase of similar substance and import to the effect that Defendants and John Harris will remove or assist in removing, or correct or assist in correcting such information, in return for the payment of money or other valuable consideration, unless and until defendants and John Harris comply with 15 U.S.C. Chapter 41, Subchapter II-A, § 1679 *et seq.* and Tenn. Code Ann. § 47-18-1001 *et seq.*

32. Defendants and John Harris are permanently enjoined from disputing, assisting in disputing or causing to be disputed the accuracy or validity of information contained in consumers’ credit reports, as defined in 15 U.S.C. § 1681a (d); removing, assisting in removing, or causing to be removed such information, and correcting, assisting in correcting or causing to be corrected such information, in return for the payment of money or other valuable consideration, unless and until defendants and John Harris comply with 15 U.S.C. Chapter 41, Subchapter II-A, § 1679 *et seq.* and Tenn. Code Ann. § 47-18-1001 *et seq.*

33. Defendants and John Harris are permanently enjoined from engaging in any deceptive, fraudulent or illegal business acts or practices in violation of 15 U.S.C. Chapter 41, Subchapter II-A, § 1679 *et seq.*, Tenn. Code Ann. § 23-3-101, *et seq.*, and Tenn. Code Ann. § 47-18-1001 *et seq.*, including, but not limited to:

- (A) Representing, directly or indirectly, to any consumer that a judgment has been filed against the consumer in any court unless Defendants and John Harris have reason to believe that a judgment has, in fact, been filed against the consumer;
- (B) Representing, directly or indirectly, to any consumer that a lawsuit has been filed against the consumer in any court unless Defendants and John Harris have reason to believe that a lawsuit has, in fact, been filed against the consumer;
- (C) Representing, directly or indirectly, to any consumer that the “public record,” or any phrase or term of similar import, indicates any factual matter pertaining to the consumer, unless Defendants and John Harris state that the “public record” upon which they relied “was obtained from the Court records where the case was filed or is pending;”
- (D) Creating a false sense of urgency or false sense of fear in any communication directed to a consumer;
- (E) Representing, directly or indirectly, that any consumer owes any debt unless Defendants and John Harris have reason to believe that the consumer, in fact, owes the debt represented;
- (F) Making oral representations that, directly or indirectly, contradict terms or language contained in Defendants’ or John Harris’ written contracts with consumers;
- (G) Referring any consumer, or in any way facilitating the consumer’s referral, to any other entity or person with common corporate parentage, unless the relationship between Defendants and John Harris and the entity or person is fully disclosed in writing prior to, or contemporaneously with, the referral and otherwise violating Tenn. Code Ann. 47-18-104(b)(18);
- (H) Receiving any money, property or thing of value from any consumer in advance of engaging in business as a credit repair organization, as defined in 15 U.S.C. § 1679a, or in advance of engaging in the credit repair business, as prohibited by Tennessee Credit Services Businesses Act, Tenn. Code Ann. § 47-18-1001 *et seq*;
- (I) Engaging in any of the prohibited practices identified in 15 U.S.C. § 1679b, pertaining to credit repair services, and in Tenn. Code Ann. § 47-18-1001 *et seq.*, pertaining to credit services businesses;
- (J) Misrepresenting, directly or indirectly, in its advertising, promotional

materials, sales presentations, or in any manner: the nature of the services to be performed; the time within which services will be performed; the ability to settle, negotiate, reduce, discharge or otherwise modify a consumer's debt; the ability to settle, negotiate, reduce, discharge or otherwise modify judgments or other legal proceedings pending or threatened against a consumer; and the qualifications, training or experience of its personnel; and

(K) Engaging in the unauthorized practice of law, or assisting others to engage in the unauthorized practice of law, defined to include, without limitation, those acts and practices specified in the Unauthorized Practice of Law statutes set forth at Tenn. Code Ann. § 23-3-101, *et seq.*, in addition to the following:

- (i) Negotiating or communicating with creditors or their attorneys concerning consumer debt or property where legal proceedings concerning such debt or property have been commenced or filed against the consumer.
- (ii) Negotiating or communicating with creditors or their attorneys concerning the settlement, resolution, discontinuance, adjournment, vacating, release or other disposition of any legal proceedings regarding consumer debt commenced or filed against the consumer;
- (iii) Representing, directly or indirectly, to consumers that defendants or John Harris will “keep you out of court”, “avoid a trial”, settle, compromise or vacate judgments or other legal proceedings, or words of similar import and substance to the effect that defendants or John Harris can or will resolve pending or threatened legal proceedings involving consumer debt against consumers, in return for the payment of money or other valuable consideration; and
- (iv) otherwise acting in a representative capacity on behalf of any given consumer with creditor’s attorneys on underlying consumer debt.

For purposes of this Agreed Final Judgment, “legal proceedings” shall be deemed to include, without limitation and by way of example only, any actions or proceedings at law or in equity involving consumer debt which have been commenced against the consumer in any court or legal forum to recover a debt or property from the consumer; judgments entered against consumers in

such actions or proceedings, and post-judgment enforcement or collection proceedings initiated against consumers in such actions or proceedings.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT pursuant to Tenn. Code Ann. § 47-18-108(a)(4), Defendants, their members, managers, employees, directors, officers, owners, parents, agents, assigns, and other persons acting in concert with them and John K. Harris individually shall be permanently required to engage in the following acts or practices:

34. Prior to charging any consumer, or accepting money from any consumer, Defendants and John Harris shall clearly and conspicuously disclose, in writing and orally, the circumstances under which consumers will qualify for any benefits under the IRS's OIC Program.

35. In connection with any representations it makes relating to the number or percentage of offers in compromise accepted by the IRS, Defendants and John Harris shall clearly and conspicuously disclose the percentage or number of submitted offers that were not accepted by the IRS and shall have prior substantiation for making such claims.

36. Defendants and John Harris shall clearly and conspicuously disclose all material terms and conditions of any guarantee they offer consumers.

37. In any advertisement in which Defendants or John Harris represent that they offer a "refund," or term or phrase of similar import, Defendants and John Harris shall clearly and conspicuously disclose that refunds are based on the amount of work performed and that the refund consideration is not based upon the success, or lack thereof, of Defendants' and John Harris' tax resolution services.

38. Defendants and John Harris shall provide consumers with a full refund or refunds

on a pro rata basis for their OIC services not performed as of the time of a consumer's refund request. Prior to entering or into or accepting payment under any service agreement between defendants or John Harris and consumers, defendants and John Harris shall clearly and conspicuously disclose and explain (a) the anticipated stages of work that will be performed in connection with the OIC services, (b) the amount of the total fee allocated to each service, (c) the refund amounts which can be expected, (d) what portion of the total fee will actually comprise any administrative/processing fees to be retained by defendants or John Harris, (e) that financing fees will not be refunded, and (f) all conditions under which consumers may be required to sign a release, including whether a refund will be conditioned on the signing of any document, release or agreement prior to receiving their refund. Defendants and John Harris acknowledge that the State of Tennessee prefers full refunds and does not approve, recommend or authorize the requirement that a consumer be required to sign a release, confidentiality or anti- disparagement clauses as a condition of receiving any refund. Defendants shall fully comply with Tenn. Code Ann. § 47-18-113 with respect to any releases or waivers used in Tennessee;

39. Defendants and John Harris shall implement policies and procedures by which all employees or independent contractors acting on behalf of Defendants and John Harris will be trained in, and required to abide by, specific measures to expediently and appropriately address the following areas (at a minimum):

- (A) the intake and timely processing of consumers' paperwork (including any and all forms or correspondence required to process applications for filing taxes, offers in compromise, or other services for which the consumer has contracted);
- (B) the intake and prompt processing of consumers' complaints, cancellations of service contracts, and requests for refunds;

- (C) prior to accepting any payment for services from consumers who request application to the IRS's OIC program, making an initial determination as to whether said applicants actually qualify for those benefits, and if not, putting them on immediate notice to that effect;
- (D) prior to accepting any payment for services from consumers who have been determined to qualify for the IRS' Offer-in-Compromise program, the provision of accurate, straightforward information, explaining all criteria that can materially affect an applicant's eligibility for that program;
- (E) prior to entering or into or accepting payment under any service agreement between defendants or John Harris and consumers, the clear and conspicuous explanation of the opportunity for a refund in connection with OIC services, including all of the disclosures required pursuant to paragraph 38.
- (F) in any release containing confidentiality or anti-disparagement clauses that consumers are required by the Defendant or John Harris (See section E above) to sign in connection with the payment of a refund or the resolution of a dispute over a refund, the incorporation of language that specifically excepts a consumer's prerogative to cooperate with any state or federal government investigation;
- (G) establishing communication guidelines that ensure that Defendants' and John Harris' clients are regularly provided with copies of all original written correspondence (not including supporting documentation previously provided to the Defendants or John Harris by the client) to the IRS or other entities on the consumers' behalf, are promptly notified of any and all additional necessary information that they must furnish to process their applications or keep their offers current, and are provided with the means, along with clear instructions, to obtain information on the status of their case; and
- (H) establishing a new compensation plan that, instead of being based 100% on commissions, incentives and/or bonuses, is comprised of a substantial salary component that is paid regardless of the number of sales made.

40. Defendants and John Harris shall deliver a copy of this Agreed Final Judgment to all principals, members, managers, officers, directors, employees, agents, independent

contractors, consultants and representatives having direct contact with consumers or having responsibilities with respect to the subject matter of this Agreed Final Judgment and shall secure from each such person a signed and dated statement acknowledging receipt of the Agreed Final Judgment. Defendants and John Harris shall deliver this Agreed Final Judgment to current personnel within thirty (30) days after the date of entry of this Agreed Final Judgment, and to new personnel within fifteen (15) days after the person assumes such position or responsibilities.

41. Defendants and John Harris shall conduct undercover interviews of their consultants and sales representatives on a continuing basis for at least three (3) years following the entry of this Agreed Final Judgment. During each calendar year, Defendants and John Harris shall conduct an undercover interview of each of their consultants and sales representatives. Defendants and John Harris shall record (audio and/or visual) the undercover interviews or reduce the results of said undercover interviews to writing. Defendants and John Harris shall make the results of said undercover interviews available to the States by providing copies of the results to each of the States on a quarterly basis with the first report being due no later than ninety (90) days after the entry of the Agreed Final Judgment, which date will then be used to determine quarterly dates. Defendants shall maintain such recording or writing for a period of one (1) year.

42. The States may at their discretion and in accordance with applicable state and federal law, conduct undercover interviews of Defendants, John Harris, JK Harris consultants and sales representatives for the purpose of confirming compliance with this Agreed Final Judgment and state law. The test shoppers are not required to disclose that they are representatives of the State when making contact with Defendants, John Harris, JK Harris

consultants and its sales representatives. Defendants and John Harris agree to void any sale that is commenced by a test shopper at the conclusion of the sale upon notification that it was a test shopping conducted by the State.

43. Defendants and John Harris shall record each written complaint, arbitration demand, and lawsuit received from a consumer located in Tennessee and, upon request by the State of Tennessee, shall provide a current, full and accurate list of such complaints to the State that includes: name of complainant; address of complainant; nature of complaint (if any); date of complaint; date of resolution (if any); and, nature of resolution (if any). Defendants and John Harris shall maintain all case management system ("CMS") notes entered electronically in connection with oral complaints made by Tennessee consumers. Nothing herein shall preclude, limit, or otherwise alter the right of the State to request documents or testimony, including but not limited to the CMS notes by service of a Request for Consumer Protection Information or other lawful process.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that:

44. Defendants and John Harris shall include in all contracts with consumers the following notice, which shall appear clearly and conspicuously in boldface, capitalized font of at least twelve (12) point type:

"IMPORTANT: IF YOU HAVE RECEIVED OR BEEN SERVED WITH LEGAL PAPERS, OR SUMMONED TO APPEAR IN COURT, YOU SHOULD CONSIDER CONSULTING WITH A PRIVATE ATTORNEY IMMEDIATELY, EVEN IF YOU RETAIN (NAME OF COMPANY) TO RESOLVE YOUR TAX PROBLEMS OR NEGOTIATE YOUR DEBTS. YOUR FAILURE TO RESPOND TO LEGAL PAPERS OR APPEAR IN COURT MAY RESULT IN SERIOUS LEGAL CONSEQUENCES. (NAME OF COMPANY) IS NOT A LAW FIRM. WE CANNOT REPRESENT YOU IN LEGAL PROCEEDINGS OR APPEAR IN COURT, OR

RESPOND TO LEGAL PAPERS, ON YOUR BEHALF."

Prior to entering into a contract with a consumer, Defendants' or John Harris' sales representative or consultant shall direct the consumer's attention to the foregoing notice and request the consumer to read such notice. Following the consumer's reading of the notice, Defendants' or John Harris' sales representative or consultant shall request the consumer to place his or her initials on a blank line, which shall be in close proximity to such notice.

45. Prior to entering into a contract with a consumer, defendants' or John Harris' sales representative or consultant shall disclose orally to such consumer that a substantial part of his or her income is based on the number of contracts sold to consumers. The written contract shall also contain the following disclosure in close proximity to and in no smaller font than that prescribed for the three-day right of cancellation: "A substantial part of our sales consultants' income is based upon the number of contracts they sell."

RESTITUTION

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED THAT, pursuant to Tenn. Code Ann. § 47-18-108(b)(1):

46. Defendants shall jointly and severally pay to the States restitution in the sum of One Million Five Hundred Thousand Dollars (\$1,500,000.00).

Defendants shall pay the sum as follows:

- (a) \$900,000.00 shall be paid prior to the entry of this Consent Judgment; and
- (b) the remaining \$600,000 shall be paid in equal monthly

installments of \$70,000 on the first day of each month until the full \$1,500,000 is paid;

At the point in time when Defendants and John Harris have made their final payment of the monies described in this paragraph and it is determined whether the entire amount has been collected and how much money will be available to the State of Tennessee, the State will present a plan for this Court's approval to specify how said monies shall be distributed. Jurisdiction is specifically reserved by this Court to permit the Court to review and approve the State's plan of distribution of the monies described in this paragraph. The Defendants and John Harris waive any and all rights to object to or otherwise participate in the review and approval of the State's plan of distribution.

PAYMENT TO THE STATES

47. Defendants shall jointly and severally pay the additional sum of Three Hundred Thousand Dollars (\$300,000.00) to the States collectively and which shall be divided as determined by the States' Attorney General. The funds received by the State of Tennessee, shall be distributed and paid as follows:

- (A) Pursuant to Tenn. Code Ann. § 47-18-108(a)(5) and § 47-18-108(b)(4), Fifteen Thousand Dollars (\$15,000.00) shall be paid to the State of Tennessee, Attorney General for attorneys' fees and costs of investigation, prosecution and monitoring for compliance of this matter, which may be used for consumer protection purposes at the sole discretion of the Attorney General.
- (B) Pursuant to Tenn. Code Ann. § 47-18-108(b)(3), Five Thousand Dollars (\$5,000.00) shall be paid to the State of Tennessee's General Fund.
- (C) Five Thousand Dollars (\$5,000.00) shall be paid to the State of Tennessee to fund a consumer education project(s) selected at the sole discretion of

the Director of the Division of Consumer Affairs or to fund investigations and/or litigation pursuant to the Tennessee Consumer Protection Act of 1977 selected at the sole discretion of the Director of the Division of Consumer Affairs.

- (D) Any other or additional sums received by the State of Tennessee shall be paid the State of Tennessee, Attorney General which may be used for consumer protection purposes at the sole discretion of the Attorney General.
- (E) If the entire amount anticipated by the State of Tennessee is not received or is received overtime, any monies received shall first be attributed to attorneys' fees pursuant to paragraph (A), next to the payment to the General Fund pursuant to paragraph (B) and finally to consumer education funding pursuant to paragraph (C).

48. Defendants shall pay the \$300,000 in equal monthly installments of \$100,000 each month beginning the month after the completion of the payment of \$1,500,000 until the \$300,000 is paid in full.

49. Defendants shall make payments by cashier's check made out to the North Carolina Department of Justice and sent to the attention of Harriet F. Worley, Assistant Attorney General.

50. All unpaid sums shall be immediately due and owing upon the sale of JKHC, or on the sale of the majority of its assets, or on a merger with another entity.

51. John K. Harris personally guarantees the full amount of all payments as indicated on the guarantee agreement which is attached to this Consent Judgment as Exhibit A and is incorporated by reference. In the event of a default, the State of North Carolina by and through its Attorney General and on behalf of the other States, as that term is defined in this agreement, may file an action to collect from John K. Harris on anything which remains unpaid.

52. Upon making each of the payments specified in Paragraphs 46 and 48, Defendants and John K. Harris shall be fully divested of any interest in, or ownership of, any monies paid and any interest in the monies, and the monies and any subsequent interest or income derived therefrom shall inure entirely to the benefit of the States, or the consumers who will receive refunds, pursuant to the terms of this Agreed Final Judgment.

53. In the event of a default of any payment obligation imposed by this Agreed Final Judgment, and in addition to any other relief or remedy elected or pursued by the States, all payments set forth in Paragraphs 46 and 48 shall be accelerated and shall become, as of the date of default, due and owing in their entirety.

54. Defendants and John Harris have represented and warranted that they have reviewed their financial situation and that:

(A) This Agreed Final Judgment and any releases given in connection herewith shall not release or extinguish a nondischargeability claim under 11 U.S.C. § 523(a) based upon the conduct that formed the basis for Tennessee's underlying claims herein, and Tennessee reserves the right to file a nondischargeability complaint (if required) in the event a bankruptcy is filed prior to payment of the full Settlement Amount. Further, Defendants and John Harris agree that nothing in this Agreed Final Judgment and /or in any release shall be construed to constitute an accord and satisfaction or a novation of Tennessee's claims for fraud, illegality, and deceptive practices or the like to that of a contract claim. In the event of an intervening bankruptcy, each and every underlying claim upon which this Agreed Final Judgment is based may form the basis for a subsequent nondischargeability claim and Tennessee is free to show in the bankruptcy court that the underlying claims herein had their genesis in or originated from fraud; and

(B) The parties and John Harris agree that this Agreed Final Judgment will be admissible in any bankruptcy matter.

55. Tennessee consumers who entered into contracts with Defendants prior to the

entry of this Agreed Final Judgment are eligible for a refund for a *pro rata* refund from the restitution pool to the extent they have not already received a refund directly from Defendants if they either:

(A) filed a complaint against Defendants with the Tennessee Attorney General's Office, the Better Business Bureau, the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance, or any similar organization prior to the entry of this Agreed Final Judgment; or

(B) within ninety (90) days of the entry of this Agreed Final Judgment file a complaint against Defendants with the Tennessee Attorney General's Office, the Better Business Bureau, the Tennessee Division of Consumer Affairs of the Department of Commerce and Insurance, or any similar organization.

56. Defendants and John Harris shall cancel the contracts and any amounts allegedly due and owing by JKHC and FRS consumers who have requested refunds or have made written complaints to JKHC and FRS. JKHC and FRS shall not negatively report such cancellation to a credit reporting agency and will send a letter to the credit reporting agencies with a copy the individual consumer and the State requesting that the consumer's obligation to JKHC and/or FTS be marked satisfied in full and any prior negative reports be deleted by the credit reporting agency. Attached as Exhibit B is a list of Tennessee consumers who qualify for this debt forgiveness provision. The consumers' personally identifying information has been redacted in this Exhibit in order to protect the consumers from further harm, including but not limited to identity theft. Except as agreed in writing by the parties, the lists and reports provided to the State of Tennessee and in the possession of the Defendants and John Harris shall not be released to any person to protect the interest of consumer privacy, to prevent further marketing to these

114777

consumers and possible identity theft, other than law enforcement authorities or pursuant to state or federal law. Defendants and John Harris also agrees that the Tennessee consumer names, addresses, telephone numbers and other personally identifiable information gathered or otherwise obtained during the implementation of this Agreed Final Judgment will not be used for any marketing purposes or provided to any other person for any reason including but not limited for the purposes of marketing these Tennessee consumers now or in the future.

57. Any release entered into by any consumer with JKHC prior to the filing of this AFJ in no way limits the amount of restitution that the State of Tennessee can recover for such consumer. Except as provided in this paragraph, the remaining terms and provisions of any such prior release shall remain valid and binding on the consumer signing such release and on JKHC and shall be unaltered by this Consent Judgment. No Tennessee consumer shall be required to enter into any release to obtain restitution under this Agreed Final Judgment. In fact, receiving restitution under this Agreed Final Judgment shall in no way alter or limit a consumer's private right of action.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that:

58. Defendant and John Harris shall undertake to respond to all consumer complaints in good faith and in a reasonable, timely manner.

GENERAL PROVISIONS

59. Nothing in this Agreed Final Judgment shall be construed as relieving the Defendants or John K. Harris of their obligations to comply with all state and federal laws, regulations, and rules, or as granting permission to engage in any acts or practices prohibited by such law, regulation, or rule.

60. The Defendants and John Harris have provided the States with certain documents, advertisements, and contracts. The Defendants and John Harris acknowledge and agree that providing these documents to the State(s) in no way constitutes the State's pre-approval, review for compliance with state or federal law, or with this Order, or a release of any issues relating to such documents.

61. This Agreed Final Judgment shall not bind any other agencies, boards, commissions or offices of the State of Tennessee.

62. This Agreed Final Judgment shall not limit the rights of any private party to pursue any remedies allowed by law.

63. If any portion of this Agreed Final Judgment is held invalid by operation of law, the remaining terms of this Agreed Final Judgment shall not be affected and shall remain in full force and effect.

64. The Tennessee Attorney General agrees to act in good faith and with due regard to fairness when considering whether to initiate court proceedings for a violation of this Agreed Final Judgment against the Defendants or John Harris. It is not the Tennessee Attorney General's intention to initiate contempt proceedings regarding violations of this Agreed Final Judgment for a single, isolated, and unintentional mistake. Except as otherwise agreed, the Tennessee Attorney General does not intent to hold Defendant's members, managers, agents, servants, and employees financially responsible for any monetary relief, penalties, or restitution related to conduct that occurred prior to entry of this Agreed Final Judgment except to the extent John Harris is personally bound by the Permanent Injunction and through a personal guarantee for the full amount of all payments set out in paragraphs 46 through 48 and 52.

65. Any notices required to be sent to the plaintiffs or to the Defendants or John Harris by this Agreed Final Judgment shall be sent by United States mail or certified mail return receipt requested. The documents shall be sent to the following addresses:

For the State of Tennessee:

Deputy Attorney General
Office of the Attorney General & Reporter
State of Tennessee
Consumer Advocate & Protection Division
Post Office Box 20207
Nashville, TN 37202-0207

For the Defendants:

Director of Legal Affairs
JK Harris & Company, L.L.C.
4995 Lacross Road, Suite 1800
North Charleston, SC 29406

For John Harris:

John K. Harris
JK Harris & Company, L.L.C.
4995 Lacross Road, Suite 1800
North Charleston, SC 29406

66. Defendants and John Harris, by signing this Agreed Final Judgment, waive service of process of the Complaint to be filed with this AFJ. .

67. Pursuant to the provisions of the Tennessee Consumer Protection Act, Tenn. Code Ann. § 47-18-108(c), any knowing violation of the terms of this Judgment shall be punishable by civil penalties of not more than Two Thousand Dollars (\$2,000.00) for each violation, in addition to any other appropriate relief.

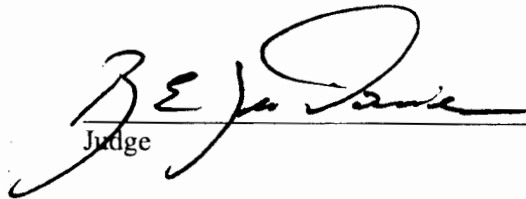
68. Nothing in this Judgment shall be construed to waive any claims of Sovereign Immunity the State may have in any action or proceeding.

69. This Judgment may only be enforced by the parties hereto.

70. Defendants and John Harris have, by signature of their counsel hereto, waived any right to appeal this Judgment.

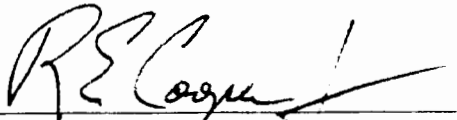
71. Defendants have agreed to pay the court costs associated with the filing of the Agreed Final Judgment, in accordance with Tenn. Code Ann. 47-18-116. Further, no discretionary costs shall be taxed to the State.

This the 19 day of June, 2008

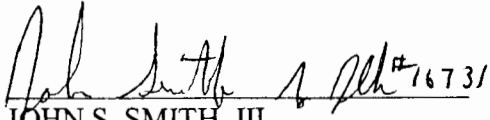


Judge

THE TENNESSEE ATTORNEY GENERAL CONSENTS:



ROBERT E. COOPER, JR.
Attorney General and Reporter
B.P.R. No. 10934



JOHN S. SMITH, III
Assistant Attorney General
B.P.R. No. 23392
State of Tennessee
Office of the Attorney General
Consumer Advocate & Protection Division
Post Office Box 20207
Nashville, TN 37202-0207
Telephone: (615) 532-3382
Facsimile: (615) 532-2910
Email: John.Smith@state.tn.us

APPROVED BY:

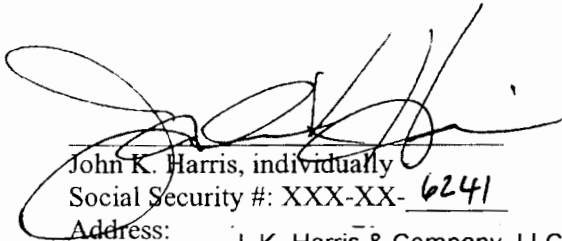

MARY CLEMENT, DIRECTOR
Division of Consumer Affairs

CONSENTING FOR THE DEFENDANTS:



Thomas H. Lee
Counsel for Defendants
B.P.R. No. 17453
Nashville City Center
511 Union Street, Suite 2700
Nashville, Tennessee 37219-89-66
Telephone No.: 615-244-6380
Facsimile: 615-244-6604
Email: tom.lee@wallerlaw.com

FOR JOHN K. HARRIS, INDIVIDUALLY:



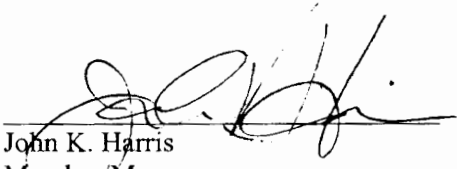
John K. Harris, individually
Social Security #: XXX-XX- 6241
Address: J. K. Harris & Company, LLC
Phone: 4975 Lacross Road, Suite 300
Facsimile: North Charleston, SC 29406
Email: Ph.: 843-745-7443
Fax.: 843-308-0521
johnharris@jkharris.com

FOR DEFENDANT JK HARRIS & COMPANY, L.L.C.:




John K. Harris
Member Manager
JK Harris & Company, LLC
FEIN: 57-1061173
Address:
Phone: J. K. Harris & Company, LLC
Facsimile: 4975 Lacross Road, Suite 300
Email: North Charleston, SC 29406
Ph.: 843-745-7443
Fax.: 843-308-0521
johnharris@jkharris.com

FOR PROFESSIONAL FEE FINANCING ASSOCIATES, L.L.C.:


John K. Harris
Member/Manager
Professional Fee Financing Associates, LLC.
FEIN: 57-1074119
Address:
Phone: J. K. Harris & Company, LLC
4975 Lacross Road, Suite 300
Facsimile: North Charleston, SC 29406
Email: Ph.: 843-745-7443
Fax.: 843-308-0521
johnharris@jkharris.com

FOR JK HARRIS FINANCIAL RECOVERY SYSTEMS:


John K. Harris
Member/Manager
JK Harris Financial Recovery Systems
FEIN: 30-0176002
Address:
Phone: J. K. Harris & Company, LLC
4975 Lacross Road, Suite 300
Facsimile: North Charleston, SC 29406
Email: Ph.: 843-745-7443
Fax.: 843-308-0521
johnharris@jkharris.com

CLERK'S CERTIFICATE

I hereby certify that a true and exact copy of
foregoing has been mailed or delivered to
all parties or counsel of record.

6-19-08 Sharon A. Barton, Dep.
Date Clerk & Master